

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RICARDO CABRERA-FLORES,  
Defendant.

Criminal No. 04-362 (HL)

**ORDER**

Pending before the Court is Chief Magistrate Judge Justo Arenas' Report and Recommendation recommending that defendant Ricardo Cabrera-Flores' motion to suppress physical evidence seized during his arrest be denied.<sup>1</sup> Defendant Cabrera-Flores submitted objections to the Report and Recommendation.<sup>2</sup> For the reasons set forth below, the Court **approves and adopts** the magistrate judge's Report and Recommendation in its entirety. Accordingly, defendant Cabrera-Flores' motion to suppress<sup>3</sup> is **denied**.

**STANDARD OF REVIEW**

A district court, may on its own initiative, refer a pending matter to a United States Magistrate Judge for a report and recommendation. 28 U.S.C. § 636(b)(1)(B). Any party may file written objections to the magistrate judge's report and recommendation within ten days after being served with a copy of the report. 28 U.S.C. § 636(b)(1)(C). The Court is obligated to make a de novo determination of any portion of the magistrate judge's disposition to which objection is made. *Id.* The Court thereafter "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." *Id.*

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<sup>1</sup> See docket no. 30.

<sup>2</sup> See docket no. 31.

<sup>3</sup> Docket nos. 16, 27.

## DISCUSSION

Pursuant to 28 U.S.C. § 636(b)(1)(B), Chief Magistrate Judge Justo Arenas held a hearing on defendant Ricardo Cabrera-Flores' motion to suppress physical evidence seized during his arrest.<sup>4</sup> The magistrate judge heard testimony from the police officers that effectuated defendant's arrest, Officer Joel Martínez Torres and Officer Charles Báez; defendant's common law wife, María Barbosa Martínez; and an acquaintance of defendant who witnessed the events prior to defendant's arrest, Juan Mejías Zerpa. After conducting the hearing and reviewing the record, the magistrate judge found that the evidence clearly established probable cause that defendant had hit his wife, that the defendant was lawfully arrested, and that the two vehicles defendant had occupied prior to the arrest were correctly subjected to search incident to arrest. The magistrate judge concluded that the search did not violate defendant's Fourth Amendment rights and that the evidence seized from the vehicles (a loaded Smith & Wesson pistol, serial number VZC-2255 and a 7.62 rifle, Model SAR-1 with the serial number obliterated and two loaded magazines) was admissible in evidence. Accordingly, the magistrate judge recommended that defendant's motion to suppress be denied.

Defendant Cabrera-Flores objects to the magistrate judge's Report and Recommendation on the grounds that Officer Martínez and Officer Báez were not credible witnesses because their testimony contained contradictions as to certain collateral details surrounding his arrest. Upon de novo review of the Report and Recommendation, defendant's objections, the transcript of the suppression hearing held before the magistrate, and all other pleadings related to the motion to suppress, the Court finds no basis for disagreeing with the magistrate judge's credibility

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<sup>4</sup> See docket no. 24.

determinations. *See United States v. Raddatz*, 447 U.S. 667, 100 S.Ct. 2406 (1980) (holding that a district court can make credibility determinations based upon the record developed by the magistrate judge). During the hearing, the magistrate judge had an adequate opportunity to observe the witnesses and to ascertain their credibility. Nothing in the record suggests that the magistrate judge's credibility determinations were erroneous.

In sum, the Court agrees with the credibility findings, facts, and law set forth by the magistrate judge and finds defendant Cabrera-Flores' objections to be without merit. Accordingly, the Report and Recommendation is hereby **approved and adopted** in its entirety, and defendant's motion to suppress is **denied**.

**IT IS SO ORDERED.**

San Juan, Puerto Rico, April 25, 2005.

S/ HECTOR M. LAFFITTE  
United States District Judge